

CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION 120975-121023

120975. To protect the privacy of individuals who are the subject of blood testing for antibodies to human immunodeficiency virus (HIV), the following shall apply:

Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual who is the subject of a blood test to detect antibodies to HIV.

120980. (a) Any person who negligently discloses results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully or maliciously discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully, maliciously, or negligently discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) Except as provided in Article 6.9 (commencing with Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance **Code**, the results of an HIV test, as defined in subdivision (c) of Section 120775, that identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in subdivision (c) of Section 120775, in accordance with any reporting requirement for a case of HIV infection, including AIDS by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

(j) The department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics that would identify individual donors.

(k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(l) When the results of an HIV test, as defined in subdivision (c) of Section 120775, are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

120985. (a) Notwithstanding Section **120980**, the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization of the subject of the test, or the subject's representative as set forth in Section 121020, to the test subject's providers of health care, as defined in subdivision (d) of Section 56.05 of the Civil **Code**, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section "providers of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

120990. (a) Prior to ordering a test that identifies infection with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) shall not apply when a person independently requests an HIV test from the provider.

(c) Except as provided in subdivision (a), no person shall administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020, signs a written statement documenting the person's informed consent to the test. This requirement does not apply to such a test performed at an alternative site pursuant to Sections 120890 or 120895. Nothing in this section shall be construed to allow a person to administer a test for HIV unless that person is otherwise permitted under current law to administer an HIV test.

(d) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a test to detect HIV on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(e) (1) The requirements of subdivision (c) do not apply when blood is tested as part of a scientific investigation conducted either by a medical researcher operating under the approval of an institutional review board or by the department, in accordance with a protocol for unlinked testing.

(2) For purposes of this subdivision, "unlinked testing" means blood samples that are obtained anonymously, or that have the name or identifying information of the individual who provided the sample removed in a manner that prevents the test results from ever being linked to a particular individual who participated in the research or study.

(f) Nothing in this section shall be construed to permit any person to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil **Code**, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government **Code**), which prohibit discrimination against individuals who are living with HIV, or who test positive for HIV, or are presumed to be HIV-positive.

120995. Actions taken pursuant to Section 1768.9 of the Welfare and Institutions **Code** shall not be subject to subdivisions (a) to (c), inclusive, of Section **120980**. In addition, the requirements of subdivision (a) of Section 120990 shall not apply to testing performed pursuant to Section 1768.9 of the Welfare and Institutions **Code**.

121000. Actions taken pursuant to Title 8 (commencing with Section 7500) of Part 3 of the Penal **Code** shall not be subject to subdivisions (a) to (c), inclusive, of Section **120980**. In addition, the requirements of subdivision (a) of Section 120990 shall not apply to testing performed pursuant to that title.

121005. Neither the department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be held liable for any damages resulting from the notification of test results, as set forth in paragraph (3) of subdivision (a) of, and in subdivision (c) of, Section 1603.3, as amended by Chapter 23 of the Statutes of 1985.

121010. Notwithstanding Section 120975 or **120980**, the results of a blood test to detect antibodies to the probable causative agent of AIDS may be disclosed to any of the following persons without written authorization of the subject of the test:

(a) To the subject of the test or the subject's legal representative, conservator, or to any person authorized to consent to the test pursuant to subdivision (b) of Section 120990.

(b) To a test subject's provider of health care, as defined in subdivision (d) of Section 56.05 of the Civil **Code**, except that for purposes of this section, "provider of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(c) To an agent or employee of the test subject's provider of health care who provides direct patient care and treatment.

(d) To a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(e) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section **120980**, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section **120980**, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

121015. (a) Notwithstanding Section **120980** or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect HIV infection of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the local health officer, that the patient has tested positive on a test to detect HIV infection, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected, except as required in Section 121022.

(b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, that shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has attempted to obtain the patient's voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient's contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon shall refer that person for appropriate care, counseling, and followup. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.

(c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect HIV infection are limited to the provisions contained in this chapter, Chapter 10 (commencing with Section 121075) and Sections 1603.1 and 1603.3. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be infected with HIV, except as required by Section 121022.

(d) The local health officer may alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on an HIV test about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and followup. Upon completion of the local health officer's efforts to contact any person pursuant to this subdivision, all records regarding that person maintained by the local health officer pursuant to this subdivision, including, but not limited to, any individual identifying information, shall be expunged by the local health officer.

(e) The local health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.

(f) Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or local civil,

criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual reported or person contacted pursuant to this section.

121020. (a) (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

(2) Notwithstanding paragraph (1), when the subject of the test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions **Code**, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions **Code**.

(b) Written consent shall only be obtained for the subject pursuant to subdivision (a) when necessary to render appropriate care or to practice preventative measures.

(c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:

(1) Notwithstanding Sections 120975 and **120980**, receive the results of the test on behalf of the subject without written authorization.

(2) Disclose the test results on behalf of the subject in accordance with Sections 120975 and **120980**.

(3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 120975 and **120980**.

121022. (a) To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the department.

(b) (1) Health care providers and local health officers shall submit cases of HIV infection pursuant to subdivision (a) by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department.

(2) This subdivision shall be implemented using the existing resources of the department.

(c) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(d) The department shall promulgate emergency regulations to

conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Title 17 of the California **Code** of Regulations, consistent with this chapter, within one year of the effective date of this section.

(e) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(f) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(g) No person shall disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency, employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(h) (1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any **evidence** of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any **evidence** of such a breach of confidentiality to an appropriate law enforcement agency.

(i) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(j) Nothing in this section shall be construed to limit other remedies and protections available under state or federal law.

121023. (a) Subject to subdivision (b), each clinical laboratory, as defined in Section 1206 of the Business and Professions **Code**, shall report all CD4+ T-Cell test results to the local health officer for the local health jurisdiction where the health care provider facility is located within seven days of the completion of the CD4+ T-Cell test.

(b) A clinical laboratory shall not be required to report a CD4+ T-Cell test result, as required by this section, if the clinical laboratory can demonstrate that the CD4+ T-Cell test result is not related to a diagnosed case of HIV infection.

(c) The clinical laboratory report with CD4+ T-Cell test results shall also include, if provided by the ordering health care provider, all of the following:

- (1) The patient's name.
- (2) The patient's date of birth.
- (3) The patient's gender.

(4) The name, telephone number, and address of the local health care provider that ordered the test.

(d) The clinical laboratory report with CD4+ T-Cell test results

shall also include all of the following information:

(1) CD4+ T-Cell test results expressed as an absolute count (the number of lymphocytes containing the CD4 epitope per cubic millimeter) and, if available, the relative count (the number of lymphocytes expressing the CD4 epitope as a percentage of total lymphocytes).

(2) The type of laboratory test performed.

(3) The date the laboratory test was performed.

(4) The name, telephone number, and address of the clinical laboratory that performed the test.

(5) The laboratory CLIA number.

(6) The laboratory report number.

(e) (1) Each local health officer shall inspect each clinical laboratory CD4+ T-Cell test report to determine if the test is related to a case of HIV infection.

(2) If the clinical laboratory CD4+ T-Cell test result is related to a case of HIV infection, the local health officer shall report the case of HIV infection or AIDS, as appropriate, to the State Department of Public Health within 45 days of receipt of the laboratory report.

(3) If the clinical laboratory CD4+ T-Cell test result is not related to a case of HIV infection, the local health officer shall destroy the laboratory CD4+ T-Cell test report.

(f) Pursuant to Section 121025, CD4+ T-Cell test reports shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(g) CD4+ T-Cell test reports shall be considered confidential public health records as defined in Section 121035.

(h) For the purposes of this section, "CD4+ T-Cell test" means any test used to measure the number of lymphocytes containing the CD4 epitope.